Supreme Court, U.S.
FILED
JAN 11 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-968

In The

# Supreme Court of the United States

October Term, 1988

BROTHERHOOD OF LOCOMOTIVE ENGINEERS,

*Petitioner,*

v.

VANE NEWTON, *et al.*,

*Respondents.*

## RESPONDENTS' BRIEF IN OPPOSITION

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## QUESTION PRESENTED

Whether the Court of Appeals could properly resolve an outstanding controversy between the parties after determining that the individual respondents had no right to recover money damages in federal court.

## LIST OF PARTIES

The petition listed a number of individual respondents in the caption of the case, but excluded other individuals who did not file any complaint against petitioner. Because the rights of most of those individuals may be affected by the outcome of the petition, they hereby appear as respondents in this matter and join the individuals previously designated as respondents in the filing of this brief in opposition. These additional respondents are named in the petition at Pet. ii-iv. However, the following individuals do not join in the filing of this brief or in appearing as respondents in this matter: Sam H. Dean, Donald E. Bisgaard, Robert W. Shaner, La Don E. Crane, Arnold M. Scheel, Frank M. Ramey, A. M. McQuade, Lloyd G. Andrews, and John R. Vincent.

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## RESPONDENTS' BRIEF IN OPPOSITION

Respondents, former employees of the Chicago, Rock Island & Pacific Railroad Company ("Rock Island"), respectfully requests that this Court deny the petition for a writ of certiorari filed by petitioner, Brotherhood of Locomotive Engineers ("BLE"), seeking review of the Court of Appeals for the Eighth Circuit's opinion in this case.

## OPINIONS BELOW

The opinion of the Court of Appeals for the Eighth Circuit is reported at 850 F.2d 1255 (Pet. App. 1a-46a). That opinion was issued upon a request for rehearing and superseded the court's earlier opinion which was

reported at 836 F.2d 1493 (Pet. App. 47a-91a). The opinions, rulings, orders, and judgment of the United States District Court for the Southern District of Iowa which form the basis for the Court of Appeals' opinion are all unreported (Pet. App. 93a-127a).

## JURISDICTION

The decision of the Court of Appeals upon rehearing was issued on June 15, 1988. Petitioner's petition for rehearing and suggestion for hearing en banc was denied on September 14, 1988 (Pet. App. 92a).

Petitioner filed its petition for a writ of certiorari on December 13, 1988. The jurisdiction of this Court to review the judgment of the Eighth Circuit is invoked under 28 U.S.C. § 1254(1).

## STATUTES INVOLVED

Sections 105 and 122 of the Rock Island Transition and Employee Assistance Act, 45 U.S.C. §§ 1004, 1017, and 45 U.S.C. §§ 797b, 797c, and 797m are set forth at Pet. App. 128a-133a.

## STATEMENT OF THE CASE

1. On November 18, 1983, some of the employee respondents filed a lawsuit against the Chicago & North Western Transportation Company ("CNW"), the United Transportation Union ("UTU"), and the BLE. *See Newton*

*v. CNW*, Civil No. 83-641-D (S.D. Iowa 1983).[1] The complaint in that case alleged that the defendants violated a contract entered into between numerous parties on March 4, 1980 ("March 4th Agreement"), provisions of the Rock Island Railroad Transition and Employees' Assistance Act ("RITEA"), 45 U.S.C. § 1001 *et seq.*, and the duty of fair representation under the Railway Labor Act, 45 U.S.C. § 151 *et seq.* (Joint Appendix 1148-98).[2] *See also* Pet. App. 104a.

The complaint requested substantive relief in the form of damages against all defendants, including petitioner. The complaint also requested that the Newton respondents be given seniority with CNW which dovetailed with the seniority of other CNW employees. The complaint was based on the Newton respondents' interpretation of the March 4th Agreement and the RITEA.

In response to the complaint, the defendants raised several arguments. The defendants argued that the Newton respondents failed to exhaust the "administrative remedies" provided by the RITEA and the March 4th Agreement, since the Newton respondents had not sought to have their claims arbitrated. The Defendants also argued that based on the reasoning of this Court in *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151 (1983), a six month statute of limitations prevented the district court from having jurisdiction to hear the case.

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[1] The respondents who were plaintiffs in *Newton* shall be referred to as the "Newton respondents".

[2] The designation "Joint Appendix" refers to the Joint Appendix filed with the Court of Appeals in this case.

The defendants filed summary judgment motions arguing, in part, that the claims in the complaint fell outside the six month limitations that should be applied to the case, and hence the district court did not have jurisdiction. The Newton respondents argued that a two year statute of limitations based upon a similar two year limitation period contained in Section 3 First (r) of the Railway Labor Act, 45 U.S.C. § 153 First (r), should be used rather than a six month period. The respondents also argued that the statute of limitations did not start running until a reasonable time after June 20, 1983 – the date the bankruptcy court issued final approval of the sale of the Rock Island assets to CNW. They argued that the February 16, 1982, agreement was merely interim and not final until the transfer was approved, because there was uncertainty regarding which railroad would finally control the railroad lines formerly operated by Rock Island. They further argued that the facts contained in the affidavits of the Newton respondents indicated that, in any event, a question of fact existed as to whether the statute of limitations should be tolled because of certain inequitable conduct by the defendants. The district court granted the defendants' summary judgment motions.

2. On appeal to the Eighth Circuit, the defendants argued that the district court's decision should be affirmed because the applicable six month statute of limitation deprived that court of jurisdiction (Pet. App. 20a). In particular, they argued that the same reasoning which supported a six month statute of limitations in *DelCostello*, should be followed, so that no action which accrued prior to May 18, 1983, could be brought in federal court. They further argued that the statute of

limitations should have started running with a signing of an implementing agreement between the BLE and CNW on February 16, 1982, allocating seniority between former Rock Island employees and incumbent CNW employees.

The respondents in the consolidated appeals again argued that the appropriate statute of limitations to apply to cases under the Railroad Labor Act is the two year period specified in 45 U.S.C. § 153 First (r). The respondents argued that the two year period specified in that section more accurately reflected a congressional determination regarding the appropriate time limit for resolving employment disputes in the railroad context. The respondents again argued that the statute of limitations did not begin to run until after June 20, 1983, when the CNW purchase was finalized.

The parties disagreed about whether the respondents had any right to arbitration under RITEA (Pet. App. 40a). The defendants argued that the statutory arbitration provision in 45 U.S.C. § 797c(g) no longer applied because of the sunset provision in 45 U.S.C. § 797c(f) (Pet. App. 40a). The respondents, on the other hand, argued that the lack of an arbitration provision strengthened their argument that they could bring an independent federal action.

3. The Eighth Circuit issued its initial ruling on January 8, 1988. Following the granting of petitions for rehearing, the court issued the opinion which the BLE asks this Court to review (Pet. App. 1a-46a).

The Eighth Circuit held that the respondents could not bring, at this time, an independent cause of action for money damages under the March 4th Agreement or under the RITEA (Pet. App. 20a-24a). The court also held

that the claims by the respondents based upon unfair representation were barred by the statute of limitations (Pet. App. 24a). Thus, the court concluded that respondents' substantive claims for money damages could not be brought in federal court (Pet. App. 25a). The Court, however, went on to resolve other controversies which existed between the parties by declaring the rights which each party had under the March 4th Agreement and the RITEA.

In particular, the court's opinion resolved a controversy between the Newton respondents and the BLE regarding the availability of arbitration and the need for the Newton respondents to have used arbitration prior to the filing of the lawsuit. The court determined that the sunset provision of 45 U.S.C. § 797c(f) was not meant to remove the disputes between the Newton respondents and the petitioner under RITEA from the arbitration procedures established by § 797c(g). As to arbitration of the March 4th Agreement, the court held that the Newton respondents had the right to have a neutral arbitrator determine whether their seniority rights were adequately protected under the terms of the February 16, 1982, agreement between CNW and the BLE (Pet. App. 45a). The court noted, however, that an arbitrator would have to determine whether the Newton respondents' claims under the March 4th Agreement and RITEA were barred by the equitable doctrine of laches. The court described some, but not all, of the factors that an arbitrator should take into account in making a laches determination (Pet. App. 45a).

## REASONS WHY THE PETITION SHOULD BE DENIED

The Petition should be denied because the arguments contained in the Petition are based on a misreading of the Eighth Circuit's opinion. Moreover, given the unique circumstances surrounding this case, there are no conflicting decisions among the courts of appeals nor does the petition present an important issue of federal law.

### I. The decision below does not raise the Question Presented in the petition.

The sole Question Presented in the petition (Pet. i) is whether the court below erred in stating that the Newton respondents had the right to have an arbitrator determine whether their rights were properly protected when the "substantive claims" could not be brought in federal court. That Question and the Argument in the petition indicate that the petitioner has misread the Eighth Circuit's opinion, and hence raises issues not presented by the Eighth Circuit's opinion. Because the issues raised in the petition are not rooted in the opinion at issue, this Court should dismiss the petition.

1. The petition argues that the Eighth Circuit's opinion improperly dealt with the arbitration rights available to the Newton respondents because the court stated: "Given the fact that the appellants' substantive claims cannot properly be brought in federal court, we now turn to the task of determining what remedies, if any, remain available to them." *See* Pet. 13, *quoting*, Pet. App. 70a. Petitioner interprets that language to indicate that the remaining portion of the court's decision was made following a determination that the court did not

have jurisdiction to hear the entire case. Petitioner's interpretation is based on its misreading of the opinion.

As noted above, part of the thrust of the *Newton* complaint was a request for money damage. However, the complaint also raised issues regarding the interpretation of the March 4th Agreement and the RITEA which petitioner and respondents debated during the course of this litigation. Such issues are to be decided by federal courts. *See Chicago & North Western Transportation Co. v. United Transportation Union*, 111 L.R.R.M. 2642, 2643 (D.D.C. 1982) (interpretation of March 4th Agreement is within the "province of the federal courts"). *See generally Andrews v. Louisville & Nashville R. Co.*, 406 U.S. 320, 323 (1972) (contracts governed by federal labor statute are "governed and enforceable by federal law, in the federal courts").

The issues in controversy centered around the need for the respondents to have sought arbitration before filing the present lawsuit and the affect of the sunsetting provision on the arbitration provisions that were added to the RITEA.[3] Indeed, petitioner itself raised the arbitration issues and argued forcefully regarding those issues.

When the court below stated that the "substantive claims" raised by the complaint could not be brought in federal court, the court was therefore referring to the fact

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[3] To help it decide the dispute regarding the applicability of 45 U.S.C. § 797c(g) in light of the sunset provision in § 797c(f), the Eighth Circuit requested the parties to submit a post-argument memorandum dealing with that issue.

that the claim for money damage was barred because of the statute of limitations and other jurisdictional problems. The statement by the court, however, did not mean that no controversy existed between the parties. Instead, as the rest of the opinion shows, the court determined that a controversy did exist, that it had jurisdiction to decide the controversy, and that it could declare the rights held by the respondents. *Cf. Butler v. Local Union 823*, 514 F.2d 442, 454 (8th Cir. 1975) (a final judgment should grant the relief to which a party is entitled, even if that relief was not requested in the pleadings).

Therefore, when the court below used the phrase "substantive claims" it did not mean "all claims", but instead referred to the claim for money damages. The court's declaratory relief under the March 4th Agreement and RITEA did not fall within the phrase "substantive claim" and hence the court's decision is not contradictory. Moreover, "the language of an opinion is not always to be parsed as though we were dealing with language of a statute". *Reiter v. Sonotone*, 442 U.S. 330, 341 (1979). Thus, the language in the opinion below is to be read in conjunction with the entire opinion. When it is read in context, it can be seen that petitioner has misinterpreted the Eighth Circuit's reference to the "substantive claims" of the respondents.

2. Petitioner also incorrectly interprets the Eighth Circuit's opinion to mean that the court "set[] aside the seniority implementing agreement . . . [and] improperly interjected itself into the bargaining process, destroying the consensual processes between the craft representative and the rail carrier" (Pet. 23). The court, however, did not set aside the February 16, 1982, agreement as it related to

members of the BLE. The court *did not* throw out that agreement, but only stated that the Newton respondents should have an opportunity to have their claims submitted to arbitration (Pet. App. 45a).

In making that argument, petitioner attempts to read language contained in the original Eighth Circuit opinion into the opinion issued after rehearing. In the original opinion, the court determined that a "fundamental impropriety" (i.e., the improper representation by the BLE) permeated the February 16, 1982, implementing agreement to an extent that the agreement was rendered invalid (Pet. App. 84a). In the opinion issued after rehearing, however, the Eighth Circuit did not reach the same conclusion. Instead, the court merely determined that the Newton respondents had the ability to seek arbitration, but did not hold that the February 16, 1982, agreement between CNW and BLE was invalid (Pet. App. 45a).

Indeed, upon rehearing, the Eighth Circuit restructured that portion of its opinion dealing with the arbitration issues. The reissued opinion makes clear that the court's decision relating to the Newton respondents was based on the fact that arbitration was still available under the terms of the RITEA and the March 4th Agreement, just as it was available to the "new hire" and "non-hire" appellants. Although the court's opinion does not contain extensive analysis regarding that point, the structure of the opinion indicates that its basis for declaring the respondents' rights to arbitration was based on its analysis in the previous section of the opinion, rather than its analysis regarding any UTU misconduct.

The court's opinion establishes a consistent scheme requiring that the respondents first seek arbitration of any dispute involving the February 16, 1982, agreement before seeking review of the merits in federal court. Thus, the court examined the merits of the one claim which had gone to arbitration, while referring all other claims to arbitration. The court's opinion, therefore, did not decide whether the CNW-BLE agreement was invalid, but instead referred that issue to arbitration for resolution.[4]

3. To the extent that the opinion below indicated that arbitration was available even though more than six months had passed from the signing of the agreement at issue, the decision is neither surprising nor incorrect. The court held that because the arbitration provisions and the RITEA did not contain a time limit for bringing arbitration, that the respondents were not automatically barred from seeking arbitration (Pet. App. 40a-43a). Thus, the court determined that even though the respondents could not bring unfair representation claims in federal court, they could still seek arbitration, subject to a defense of laches.

Petitioner incorrectly argues that the Eighth Circuit's approach does not square with this Court's reasoning in

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[4] The above interpretation demonstrates the incorrectness of the BLE's argument that the lower court improperly used the problems with the UTU arbitration to invalidate the CNW-BLE agreement (Pet. 20). The problems with the UTU's bargaining of the implementing agreement have already gone to arbitration, while those connected with the BLE's bargaining have not. Thus, the arguments in the petition based on that unfounded assumption by petitioner should be disregarded.

*DelCostello*. However, *DelCostello*, and cases decided subsequent to that opinion, have dealt with whether a federal six month statute of limitations impliedly applies to breaches of the duties established by certain federal labor statutes. No case has ever held or implied that a six month limitation period exists for demanding arbitration under a contractual arbitration procedure or under a statutory provision creating an arbitration procedure. Indeed, if such a period were implied into a contract, the Court, rather than the parties, would be establishing contractual time limits for arbitration procedures.

Generally, a collective bargaining agreement governs the use of arbitration, and such an agreement sets the length of time which a party or an employee has to initiate a request for arbitration. The six month *DelCostello* period applied to labor cases has no relation to the time period specified for arbitration. Many contractual arbitration time limits are short, and may be as short as 48 hours. Other time limits for arbitration are much longer *Cf. Sisco v. Consolidated Rail Corp.*, 732 F.2d 1188, 1190 (3d Cir. 1984) (contractual provisions in labor agreement may *prevent* bringing of dispute for one year); *Conticommodity Services Inc. v. Phillip & Lion*, 613 F.2d 1222, 1226 (2d Cir. 1980) (describing a one-year period for seeking arbitration in the non-labor context). Therefore, the six month statute of limitations is not related to the ability of an employee to file an arbitration claim under a collective bargaining agreement.

This concept can best be illustrated by a hypothetical example from an arbitration context slightly different from the one at issue. Assume that parties to a collective bargaining agreement have agreed that because of past

discrimination, any discrimination claim brought by an employee can go to arbitration up to one year following the alleged discriminatory act. Federal law and most state laws only allow a person six months for the filing of a discrimination claim with the appropriate agency. *See, e.g.*, 42 U.S.C. § 2000e-5(f). Failure to file within that time period bars a subsequent lawsuit. *See, e.g., Delaware State College v. Ricks*, 449 U.S. 250 (1980).

Under that scenario, if an employee attempts to file a discrimination complaint with the appropriate agency seven months after the alleged act, the agency will dismiss his claim immediately. If the employee then files a lawsuit, the court will state that the employee's action is barred by the applicable limitation period. However, if the matter reached the court quickly enough, the court could correctly indicate that while it had no jurisdiction to hear the substantive discrimination case, it could declare that arbitration under the contract was still available to the plaintiff because the arbitration period specified in the agreement had not yet expired. Thus, a person can be denied access to a court regarding a claim, while still having the ability to raise that claim in an arbitral forum. *Cf. Santos v. District Council of New York*, 619 F.2d 963, 969 (2d Cir. 1980) (accrual of cause of action for statute of limitation purposes may not preclude the availability of other relief in a non-judicial forum).

In this case, the court below made a similar decision to the hypothetical decision described above. The court held that it did not have the ability to hear the claim for damages. The court, however, also stated that because there was no time limit specified for when a claim for arbitration must be brought, the respondents could bring

a claim for arbitration subject to the defense of laches.[5] The court also correctly indicated that it was for the arbitrator rather than the court to determine whether the claim for arbitration was barred under the doctrine of laches. *See International Union of Operating Engineers v. Flair Builders, Inc.*, 406 U.S. 487, 491-92 (1972) (if a broad arbitration clause exists with no specified time limit for seeking arbitration, an arbitrator is to decide the laches issue).

## II. The unique nature of this case means that the petition raises no issues of national importance which this court should resolve.

1. On the issue presented by the petitioner, the decision of the court below does not conflict with any opinions of this Court or of any other court. Therefore, there is no conflict among the lower courts that should be resolved by this Court.

This case arose out of the discontinuation of service of the Rock Island railroad. The respondents know of no other cases pending or decided in any other court of appeals which deal with the issue of the availability of

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[5] The lower court properly determined that arbitrator should, in the first instance, determine the timeliness of a request for arbitration. *See Conticommodity*, 613 F.2d at 1227; *Niro v. Fearn International, Inc.*, 827 F.2d 173, 176 (7th Cir. 1987) (arbitrators are to decide procedural issues in the first instance). *See also John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 556-59 (1964) (describing general powers of arbitrators to decide "procedural" and "substantive" issues). *Cf. AT&T Technologies, Inc. v. Communications Workers of America*, 475 U.S. 643, 649-50 (1986) (describing generally when disputes should be referred to arbitrators).

arbitration for former Rock Island employees as presented in this case. Petitioner, however, argues that the decision below conflicts with other decisions on several points. But, as noted above, those arguments are based on a misreading of the lower court's opinion and existing case law. The lower court did not, as petitioner argues, order that certain relief be granted after finding that it did not have jurisdiction over the entire case. Instead, the Eighth Circuit determined that there was no subject matter jurisdiction over certain portions of the case, and no meritous issues on another part of the case due to the statute of limitations, while impliedly holding that there was jurisdiction over another existing and remaining portion of the case. When the case below is interpreted in that fashion, no conflict exists between that decision and any other decisions.

2. The circumstances giving rise to this case are unique. The case involved the closure of a railroad, the reaching of a broadly worded agreement (i.e., March 4th Agreement) regarding, among other things, the absorbtion of Rock Island employees into any of a number of potential new carriers, the passage of a federal statute (i.e., RITEA) specifically designed to meet the problems of the Rock Island situation, and the failure by at least one union to properly act during the negotiations regarding seniority. The combination of events which preceded the filing of the lawsuits at issue indicate that the resolution of particular matters as raised by this writ will not have any important federal consequences.

Indeed, because of the filing of this lawsuit and the opinion issued by the Eighth Circuit, it is doubtful that

any other rail carriers, unions, or employees would conduct themselves in the same manner as those parties acted in this case. Moreover, in light of the case below, Congress itself may draft legislation dealing with the closure of a rail carrier more specifically and clearly so that the needs and expectations of all future parties are clarified further than they were in this instance.

Because the situation giving rise to these cases is unique, and because it is doubtful that they will be repeated, the petition raises no important issue of federal law which the Court should decide.

## CONCLUSION

For the above reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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